

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Third Periodic Review of the |) | MB Docket No. 07-91 |
| Commission's Rules and Policies |) | |
| Affecting the Conversion |) | |
| To Digital Television |) | |

To: Secretary, FCC

COMMENTS

The University of Michigan ("University"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

The University applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, University strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing for achieving their "ultimate" or "final" DTV transmission facilities, particularly in circumstances where there might be some uncertainty regarding the "ultimate" facilities that will be allotted in the DTV Table of Allotments.

Specifically, with respect to WFUM-DT, the allotment in the "Final" DTV Table of Allotments for WFUM-DT is apparently still subject to Canadian clearance. According to ¶ 104 of the just-released *Seventh Report and Order and Eighth*

Further Notice of Proposed Rule Making in MB Docket No. 87-268 (“*Seventh Report and Order*”), the FCC is “working to coordinate all Appendix B facilities as a group so that individual applications do not need to be coordinated.” Clearly, however, until the FCC can finally announce Canadian clearance on the WFUM-DT allotment and the University can file its application and be authorized with fully-approved facilities specified for WFUM-DT, the University cannot finalize its plans and take concrete steps to construct and operate its “final” DTV facilities. The uncertainty surrounding the WFUM-DT allotment and Canadian clearance affects the timing and process for the University’s buildout.

BACKGROUND

The University is one of the country’s premier public institutions of higher education. It is the licensee of noncommercial educational station WFUM (TV), Channel *28, and WFUM-DT, Channel *52, in Flint, Michigan. The University is the PBS member station in Flint, broadcasting a wide variety of high-quality news, public affairs, informational, educational and entertainment programming, including children’s programming, to the station’s service area.

University was allotted out-of-core Channel *52 as its pre-transition digital channel, and WFUM-DT is currently licensed and operating on Channel *52 with an antenna mounted on the WFUM (TV) tower with ERP of 200 kW at 258 m HAAT.

It was always the University’s intention ultimately to return to its analog Channel *28 as its permanent digital channel, and the University so specified in the

FCC's channel election process. The FCC's "Final" Table of DTV Allotments, Appendix B of the *Seventh Report and Order*, specifies facilities for WFUM-DT on Channel *28 of 126 kW at 258 m HAAT. However, the University has been led to believe that some concerns might have existed regarding Canadian clearance of WFUM-DT's proposed facilities, and that uncertainty affects how it can plan for the transition. Until Canadian clearance is obtained for the Final Table, the University's plans cannot be finalized as a result of that uncertainty.

If the "Final" allotment for WFUM-DT is cleared by Canada, the University should be able to convert its digital operations from Channel *52 to Channel *28 fairly easily, without having to undertake any tower work, and satisfy the FCC's proposed deadline for constructing "final" DTV facilities by the deadline for the DTV transition.

So, for the University, the transition process turns on the status of the coordination of its permanent DTV channel allotment –whether it is resolved successfully or still in question, and, if so, an approximate date when a definitive answer will be available.

COMMENTS

I. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

University strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital transition deadline by providing substantial flexibility to stations regarding the process for and timing of their achieving their "ultimate" or "final" DTV transmission facilities, so long as facilities

of some sort are constructed on permanent DTV channels by February 17, 2009. This would be particularly true if there turns out to be some issue with Canadian clearance of the supposedly “final” WFUM-DT allotment.

Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

University urges that the FCC should take advantage of the flexibility in the law, by similarly according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so, subject to the minimal requirement that all DTV stations be operating on their permanent DTV channels by the transition deadline (unless construction extensions are authorized by particular circumstances). The process and timing contemplated by the FCC in the *NPRM* will create enormous difficulties for literally hundreds of stations across the country, who will virtually simultaneously have to take down analog or interim DTV stations, to install equipment for their DTV stations (to get their DTV stations operating on their new permanent DTV channels in the case of over 600 stations whose permanent DTV channels are not the same as their interim channels and

nearly 140 stations that are “singletons,” or to move DTV equipment to locations now occupied by analog equipment in the case of many other stations, including WFUM-DT), particularly since that time occurs in the middle of the winter, which in many parts of the country makes towers inaccessible or tower work difficult or dangerous.

In addition to the probable physical impossibility of many stations making DTV facilities changes in the immediate run-up to the transition deadline, there are many other factors that will affect stations as they play out the transition in their particular circumstances. Many stations, WFUM-DT included, have not yet been able to apply for construction permits for their final DTV facilities, and can't yet know when they can do that, how long the process will take, and what difficulties or unexpected issues they will face. Many of these stations, for one reason or another, including problems with international coordination, may want or need to apply for facilities that do not precisely line up with the facilities proposed to be allotted to them DTV Table. Many stations may have continuing financial or other constraints that limit the facilities they can deploy now on their permanent DTV facilities, but have every intention to ultimately construct facilities reaching the largest possible audience.

For all these reasons, generally, the University urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station's own path and timing in achieving its final DTV facilities, so long as some minimally acceptable

level of DTV service is being provided on permanent DTV channels as of the deadline. The University also urges the FCC to be clear as soon as possible on whether particular allotments in the zone of Canadian coordination have been approved.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 67 of the *NPRM*, the FCC suggests that stations will need to get construction permits for, and then construct and license DTV facilities that precisely match the facilities specified in the DTV Table of Allotments, all to be accomplished by the transition deadline at the latest.

As noted above, the University does not believe that the FCC should require every station to be operating with its “full” permanent facilities by the transition deadline, if by “full” the FCC means precisely those facilities specified in the DTV Table. In addition, the University does not believe that, at this point, the FCC should not specify a requirement that stations apply for such facilities now, or a deadline for when they have to achieve them.

The University also urges the FCC to be flexible, as needed, for stations whose expectations about “full” DTV facilities may turn out to be unfulfilled because of international coordination issues. The FCC should at the very least allow through a construction permit process for the adjustment or modification of facilities (such as directional antenna patterns) as compared to what is currently proposed in the DTV Table, if these changes solve international coordination issues,

particularly if they can alleviate restrictions that would otherwise require DTV stations to operate at severely reduced power.

III. The FCC should accommodate, as soon as possible, upgrades to existing DTV stations beyond those facilities specified in the DTV Table.

As noted above, the University's initial concern about the transition process as it relates to WFUM-DT is that the FCC needs to clear the Final DTV Table allotments at the earliest possible time, thereby permitting the University to apply and be authorized for, and then construct, the facilities specified in the Table of Allotments. This would permit the University to make and effectuate its plans to place its "full" facilities into service in a timely manner. However, the University would also like to have an opportunity to maximize coverage of WFUM-DT at some point, and it believes that it should have an opportunity to evaluate its options, and apply for authority to upgrade WFUM-DT coverage as possible following the resolution of any applicable international coordination. This should, in fairness, take place prior to the FCC opening up any opportunities by others (prospective applicants for new DTV stations, LPTV stations, etc.) for applying for facilities that might preclude an upgrade for WFUM-DT.

CONCLUSION

University urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

UNIVERSITY OF MICHIGAN

By: Todd D. Gray
Todd Gray
Margaret Miller
Barry Persh

Its Attorneys

DOW LOHNES PLLC
1200 New Hampshire Ave., N.W.
Suite 800
Washington, DC 20036
(202) 776-2000

August 14, 2007